

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Parsons, KS, Employer**

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**Docket No. 07-1342  
Issued: October 23, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 20, 2007 appellant filed a timely appeal of the January 19, 2007 decision of the Office of Workers' Compensation Programs which denied further merit review. Because more than one year elapsed between the most recent merit decision of January 9, 2006 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether the Office properly denied appellant's request for reconsideration.

**FACTUAL HISTORY**

On April 11, 2000 appellant, then a 40-year-old carrier, filed an occupational disease claim alleging that he developed bilateral carpal tunnel syndrome in the performance of duty. He became aware of his condition on June 1, 1999. Appellant did not stop work but returned to a

limited-duty position.<sup>1</sup> He retired on June 15, 2002. The Office accepted the claim for right carpal tunnel syndrome.

Appellant came under the treatment of Dr. Gary Yarbrough, a Board-certified family practitioner. In reports dated January 17, 2000 to February 5, 2001, the physician noted that appellant was a letter carrier, who performed repetitive duties involving both arms and experienced pain and paresthesias in his hands. An electromyogram (EMG) of February 9, 2000 revealed right median mononeuropathy of the wrist primarily involving the motor fibers, mild to moderate in nature and consistent with right carpal tunnel syndrome. Dr. Yarbrough diagnosed bilateral carpal tunnel syndrome and recommended wrist and forearm splints. In reports dated February 2 and 19, 2001, Dr. Yarbrough noted a worsening of appellant's carpal tunnel syndrome and referred him to Dr. Paul Toma, an osteopath, for an endoscopic carpal tunnel release which was performed on March 5, 2001. Appellant continued postoperative treatment with Dr. Yarbrough. In reports dated April 6 to June 20, 2001, he stated that appellant's symptomology was slowly resolving with residual weakness and diminished functional capacity in the right hand and forearm. He noted that an EMG dated April 27, 2001 revealed no abnormalities.<sup>2</sup>

Dr. Yarbrough subsequently noted appellant's continued complaints of pillar pain of the right hand, osteoarthritis and fusiform in the right wrist. On March 15, 2002 he opined that appellant had reached maximum medical improvement with respect to his bilateral carpal tunnel syndrome and hip condition. Dr. Yarbrough opined that appellant was permanently disabled from his position as a letter carrier.<sup>3</sup>

On June 26, 2002 appellant filed a claim for a schedule award. On March 25, 2003 the Office referred appellant for a second opinion evaluation by Dr. Michael H. Munhall, a Board-certified orthopedic surgeon. He was requested to rate any impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).<sup>4</sup> In a report dated April 14, 2003, Dr. Munhall found that appellant sustained one percent permanent impairment of the right arm and a five percent permanent impairment of both the left and right lower extremity. In a report dated April 14, 2003, an Office medical adviser concurred with Dr. Munhall's impairment rating.

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<sup>1</sup> On September 22, 1999 appellant filed a Form CA-2, notice of occupational disease, which was accepted by the Office for aggravation of traumatic arthritis of both hips, File No. 11-0174207. This claim was consolidated with the current claim before the Board.

<sup>2</sup> In the course of developing the claim regarding continuing residuals of his work-related condition, the Office referred appellant to a second opinion physician and also to an impartial medical examiner.

<sup>3</sup> Appellant was offered a position as a limited-duty city letter carrier effective March 4, 2002. On June 21, 2002 the Office advised that appellant returned to a modified position as a letter carrier on March 4, 2002 and has been working successfully for 60 days. The Office determined that this position fairly and reasonably represented appellant's wage-earning capacity with no loss of wage-earning capacity.

<sup>4</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

In a decision dated June 5, 2003, the Office granted appellant schedule awards for a 10 percent permanent impairment to both lower extremities. The period of the award was from May 6 to November 23, 2003. On August 18, 2003 the Office granted appellant a schedule award for one percent permanent impairment of the right upper extremity. The period of the award was from April 14 to May 5, 2003.

In a letter dated August 16, 2004, appellant requested reconsideration of the schedule award for the right arm. He noted that he was not requesting reconsideration of the 10 percent permanent impairment of the bilateral lower extremities. In a May 19, 2004 report, Dr. Bruce Silverberg, a Board-certified orthopedic surgeon, opined that appellant was not at maximum medical improvement with respect to the condition of bilateral carpal tunnel syndrome and recommended an EMG. An EMG dated July 9, 2004 revealed right distal median motor axonal neuropathy greater than a sensory axonal or demyelinating neuropathy consistent with a right carpal tunnel syndrome with recent denervation changes persisting, borderline left distal median sensory latency prolongation suggestive of carpal tunnel syndrome

Dr. Silverberg's report and the case record were referred to an Office's medical adviser. In a September 8, 2004 report, he advised that the medical evidence was inadequate to determine impairment. He noted that Dr. Silverberg determined that appellant had not obtained maximum medical improvement.

By decision dated September 9, 2004, the Office denied modification of the August 18, 2003 decision.

On September 8, 2005 appellant requested reconsideration. He submitted a statement from Joseph Lombardo, a carpenter, who employed appellant as a handyman from May 2003 to April 2004. Mr. Lombardo advised that appellant had medical restrictions which prevented him from working full time.

In a decision dated January 9, 2006, the Office denied modification of the September 9, 2004 decision.

In a letter dated January 5, 2007, appellant requested reconsideration. He summarized his employment and his medical treatment for bilateral carpal tunnel syndrome. Appellant asserted that the Office misinterpreted Dr. Silverberg's medical report and Mr. Lombardo's statement. He contended that he had residuals of his accepted bilateral carpal tunnel syndrome and should be compensated for his condition.

By decision dated January 19, 2007, the Office denied appellant's reconsideration request on the grounds that his letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Act,<sup>5</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>6</sup> which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(1) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(2) Advances a relevant legal argument not previously considered by the [Office]; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by [the Office.]”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>7</sup>

### **ANALYSIS**

Appellant’s January 5, 2007 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office.

Appellant did not submit any new medical evidence with his reconsideration request, only a narrative statement which summarized his employment and his medical treatment for bilateral carpal tunnel syndrome. He contended that the Office misinterpreted Dr. Silverberg’s medical report and Mr. Lombardo’s statement and asserted that residuals of his accepted bilateral carpal tunnel syndrome had not been adequately compensated. However, this is insufficient to show that the Office erroneously applied or interpreted a specific point of law nor does it advance a relevant legal argument not previously considered. The Board notes that the factual aspects of appellant’s claim are not in dispute and were not the basis of the Office’s prior denial of modification of the schedule award for the right upper extremity. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant did not submit any new evidence with his reconsideration request. The Office’s January 9, 2006 merit decision denied modification of the August 18, 2003 decision

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<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b).

<sup>7</sup> *Id.* at § 10.608(b).

granting appellant a schedule award for one percent impairment of the right arm finding there was no medical evidence supporting that appellant had a greater impairment. The underlying issue in this case is medical in nature. As noted, appellant did not submit any new and relevant medical evidence with his reconsideration request.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his January 5, 2007 request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 19, 2007 is affirmed.

Issued: October 23, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board